FILED
DEC 6 1994
OFFICE OF THE CLERK

(14)

No. 93-1823

In The

Supreme Court of the United States

October Term, 1994

State of Missouri, *et al.*,

Petitioners,

v.

Kalima Jenkins, *et al.*,

Respondents.

On Writ Of Certiorari
To The United States Court Of Appeals
For The Eighth Circuit

BRIEF OF AMICUS CURIAE THE CIVIC COUNCIL OF GREATER KANSAS CITY IN SUPPORT OF RESPONDENTS

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December 6, 1994

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

19 pp

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INTEREST OF *AMICUS CURIAE*

The Civic Council of Greater Kansas City (hereafter referred to as the "Civic Council") is an individual membership organization generally comprised of the chief executive officers of 70 of the largest companies and professional firms in the bi-state (Missouri and Kansas) metropolitan area comprising Greater Kansas City. These companies and firms currently employ thousands of people across the metropolitan area. The Civic Council was founded over 30 years ago for the purpose of bringing together the chief executive officers of these major employers to allow them to consolidate their resources to solve community problems. The Civic Council is governed by a 20-member Board of Directors which sets overall policy direction. The Civic Council has an Education Policy Committee that advises the Board of Directors on education issues. Education has long been a high priority for the Civic Council. The Civic Council and its members have a long history of involvement in supporting the Kansas City, Missouri School District (hereafter referred to as "KCMSD") and the desegregation case which is the subject of this appeal. The Civic Council has been a constructive critic and has invested human and financial resources in assisting the KCMSD in building management systems to support the educational process.

No party to this litigation shares the Civic Council's particular perspective, and thus the input of the Civic

Council as provided by this amicus curiae brief should be of benefit to the Court.[1]

ARGUMENT

I. THE COST OF THE REMEDY THAT THE COURTS BELOW HAVE APPROVED IS NOT EXCESSIVE OR UNFAIR TO THE STATE AND THE REMEDY HAS NOT YET ACCOMPLISHED THE GOAL OF PROVIDING KANSAS CITY STUDENTS WITH A HIGH-QUALITY, DESEGREGATED EDUCATION. THEREFORE, THE JUDGMENTS OF THE COURTS BELOW SHOULD BE AFFIRMED.

The Civic Council can provide this Court with the appropriate local perspective regarding what the costs of the remedy are; why the damage caused by the State's conduct justifies the portion of the cost that the State has been ordered to pay; and why this Court must not terminate any part of the remedial effort that the courts below have ordered since Kansas City does not yet have the high-quality, desegregated school system that it would have had but for the State-mandated discrimination and racial segregation of schools.

[1] All parties to this proceeding have consented to the Civic Council's participation pursuant to Sup.Ct.R. 37.3. The original written consents have been lodged with the Clerk of the Court.

A. The State's Repeated Invocation of the "$1.3 Billion" Cost of the Remedy Fails to Take Into Account the History of the Funding Issues in This Case and the Depth of the Effort that Will be Required To Desegregate Fully the Kansas City Schools.

The State creates the impression that it is a victim of alleged extravagances of the plaintiffs, teachers union, school district and courts below. Its emphasis on dollar figures does not take into proper account all aspects of the cost of the remedy and how it is being funded. A proper presentation demonstrates that the burden on the State is not as dramatic as it appears and is fair in proportion to its history of discrimination in the Kansas City, Missouri schools. Since the Civic Council for several years has placed its highest priority on education and has a long history of involvement in supporting the KCMSD as well as being a constructive critic, it is in a unique position to explain the actual costs involved in the remedy ordered by the courts below.

1. *Local Contribution.* It has long been clear to the Civic Council that the KCMSD would continue to lose white and middle-class families and fail to provide the area with capable, employable graduates for area businesses and industries, unless the district had a competitive tax rate to fund educational programs that meet the skill and knowledge requirements of students whether they go to work after high school or continue their training and education. In 1990, this Court considered the State's strong objection to the federal courts setting aside state law that barred local tax increases so that the

KCMSD's taxpayers would make a meaningful contribution to the Kansas City remedy. This Court ruled that the courts below, at the initiative of the local taxing authority (in this case the duly elected school board), had the authority to set aside state laws that capped the property tax at levels so low that no significant local contribution could be generated. *Missouri v. Jenkins*, 495 U.S. 33 (1990). The alternative was for the State to pay the entire cost of the remedy through principles of joint and several liability. *Jenkins v. Missouri*, 855 F.2d 1295, 1310-11 (8th Cir. 1988), *aff'd in part, rev'd in part*, 495 U.S. 33 (1990).

The Civic Council strongly supported the tax increase at issue in that case. The ordered increase brought the property tax levy from $2.05 per $100 of assessed valuation to $4.00 at that time. *Jenkins*, 855 F.2d at 1301. The Civic Council, which includes several of the KCMSD's major property taxpayers, supported such a significant tax increase because it recognized the importance of the local community taking ownership and responsibility for improving the quality of Kansas City schools. Such an increase could make successful desegregation a possibility and help pay for the specialized programs that would attract students to schools outside of their segregated neighborhoods.

The Civic Council also recognized that the property tax levy rate in Kansas City was "much less than the tax levy of any neighboring school district," *Jenkins v. Missouri*, 672 F.Supp. 400, 413 (W.D. Mo. 1987), because State law required super-majority votes of the people to raise the levy, and the voters had stopped their support at the super-majority level once the KCMSD's enrollment became majority black in 1969. *Jenkins*, 855 F.2d at 1312.

The Civic Council also supported a later increase of the property tax levy rate to $4.96, with the $.96 increase earmarked for the purpose of helping to maintain the KCMSD's salaries at levels as near market rates as necessary to implement the desegregation plan. David Stanley, the Chairman and Chief Executive Officer of Payless Cashways, a current member of the Civic Council Board of Directors and a former chairman of the Civic Council and its Education Committee, testified before the school board at a public hearing in support of the $.96 tax increase. The salaries of teachers, education professionals, and other KCMSD staff and administrators were vastly below competitive levels and clearly inadequate to staff the specialized magnet programs that were in place. The Civic Council recognized that the remedy as a whole would not succeed without this relief and was supportive of local efforts to fund the KCMSD's share.

The result of this local effort is that the KCMSD has tens of millions of dollars each year to contribute to its presumptive share of the remedy imposed by the courts below. The local taxpayers have paid hundreds of millions of dollars toward the costs of the remedy programs, including those at issue here. Moreover, the KCMSD consistently has actually paid its full presumptive share, one-half in almost all cases, of capital improvement costs.

Local taxpayers provided this financial support despite the State, not because of it. The State severely restricts the ability of local school districts to raise local funds. *Jenkins*, 672 F.Supp. at 411. The State had the ability at any time to take legislative action to desegregate the KCMSD and to give school districts undergoing

desegregation greater flexibility to raise local revenue, but it has chosen not to do so.[2]

Unlike the State, the KCMSD has issued bonds to defray the cost of capital improvements rather than attempting to pay all capital expenses out of current revenue. KCMSD property taxpayers, including Civic Council members, have paid 100 percent of the cost of the debt service on the KCMSD's share of the capital program. The State's complaint that the costs of desegregation in Kansas City restrict the State's ability to support other services is primarily the result of the fact that the State refuses to use its legal power to issue such bonds to pay its share of these long-term capital costs.

2. *Costs Not at Issue Here.* The State's focus on the overall cost of the remedy also obscures the fact that substantial portions of the remedy are not before the Court at all in the orders under review. The costs of all the capital improvements (many of which are not yet complete), ordered by the courts below in the amount of approximately $544 million, and the magnet program costs, including transportation, almost $330 million to

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[2] The Civic Council lobbied the Missouri General Assembly for adoption of Senate Bill 380, The Outstanding Schools Act, and supported increased corporate income taxes and increased taxes on higher earning individuals to support improved education funding on a statewide basis. At the same time, the Civic Council is sensitive to, and has lobbied against, any imposition of "punitive" taxes by the General Assembly only on residents of the KCMSD. Such taxes would make it even more difficult to attract and retain businesses within the district because of the inequities that would be created by such punitive taxes versus those across the metropolitan area.

date according to the State's own figures, are not within the scope of the questions presented by the State in its Petition for a Writ of Certiorari.

The capital improvement costs warrant further discussion, however, because the atrocious condition of schools in Kansas City at the time of the remedy hearings in 1985 was the visible manifestation of the State's financial abandonment of schools in this district as its students became majority black. As the trial court below explained, the Kansas City "physical facilities have literally rotted" as the result of the KCMSD's "inability to raise additional funds under the [State finance] system" after the KCMSD's student population became majority black in 1969. *Jenkins*, 672 F.Supp. at 411.

The Civic Council is an active supporter of the economic development of the Kansas City area. These schools were an embarrassment and blight on the prospect of recruiting talented management and staff to our businesses. It was impossible to explain how a community could allow its children to spend hours each day in buildings with reeking bathrooms, leaking roofs, and temperature controls so bad that classrooms were freezing or broiling, and then pretend that they could learn there.

The capital costs of closing and replacing the worst of these buildings, and renovating those that could be modified, to be safe and healthy and accommodate modern educational programs were and remain essential to the success of the remedy. Schools in Kansas City that have been built or renovated under the plan are schools of which we are now proud but more importantly which

communicate to children that they and their education have value and are a priority in our community. The fact that this cost must now be paid in a short period of years is the price the State should pay because of its segregation and concomitant economic starvation of these schools over the course of decades. These are, however, one-time capital costs. From a business standpoint, it is inappropriate to lump them in with ongoing program costs, as the State does, to create the picture of a huge, endless financial burden.

3. *Overall Foundation Formula Support of the Kansas City District*. The State takes pains to point out that its financial support of the KCMSD out of regular, non-desegregation revenues is at a level beyond the average per capita level elsewhere in the State. Brief of Petitioners at 26 n. 16. While this, too, is not before the Court, the picture it presents is so distorted that it requires correction. The KCMSD was one of the successful parties in a recent state court school finance litigation, *Committee for Educational Equality v. Missouri*, No. CV190-1371CC (Cir. Ct. Cole Cty.), that challenged the adequacy and equity of the system of school finance in Missouri under the provisions of the Missouri Constitution. The trial court in that case directed the Missouri General Assembly to devise a remedy that cures the inequities in the system.

The Civic Council played a key role in the passage of the legislation that resulted, The Outstanding Schools Act, Senate Bill 380 (R.S.Mo. 1993). The Act provides a significant overall increase in funding for education in Missouri and better recognition of the extra costs of educating at-risk children. This new system began phasing into effect in the current fiscal year. The figures that the

State cites in note 26 of its brief reflect the very recent funding increases that resulted from that effort. It rings hollow for the State now to tout a level of funding that Kansas City and other school districts have just begun to receive, had to go to court to get, and had to fight hard in the General Assembly to achieve.

4. *The Extent of the Harm and Depth of the Need*. The most fundamental flaw in the State's emphasis on dollar figures is that it glosses over the vast harm the State did to the schoolchildren in Kansas City by its segregation mandates. The State would have the Court believe that the harm of *de jure* segregation was to "deprive[ ] minority and non-minority students of the cultural richness of a diverse educational environment. . . . " Brief of Petitioners at 22. This absurd understatement insults the people of this community. Missouri was a slave state. Teaching an African-American child to read was forbidden by law until after the Civil War. It was a crime thereafter to educate white and black children in school together, and our Missouri Constitution did not eliminate that prohibition until 1976.

When *Brown v. Board of Education*, 347 U.S. 483 (1954), was issued, the State stood back and left implementation to local districts, with the result that segregated conditions did not change. White enrollment in Kansas City plunged from 1954 to 1977 when this case was filed, and local voters were unwilling to raise financial support for the KCMSD once the KCMSD's enrollment became majority black in 1969. The State could have stepped in at any time and accomplished effective desegregation. That would have been far easier in 1960 when the student population was 73 percent white, or in 1970, when the

student population was just under 50 percent white, than in 1983-84 (the year in which liability was found) when it was only 27 percent white.

While the school buildings "rotted" as a result of segregation, that was just the external condition that the eye could see. The quality of education was equally terrible, expectations for students were low, and the KCMSD was the only school district on the Missouri side of the metropolitan area that did not have the State's AAA rating. The lack of that rating was an emblem to families moving to the area – and to white and middle-class families in the KCMSD with choices – that their children would be relegated to second-class status if they attended school in the KCMSD. We recognize in our activities in support of education that vast socio-economic disparities were created in Kansas City through the long history of segregation and the resulting deterioration of education in the KCMSD.

The Civic Council does not ask the Court to disregard the cost of the remedy. It is very substantial. Costs only can be evaluated as appropriate or excessive, however, when measured against the needs involved and the value of the benefit to be gained. Against both of those measures, the cost of this remedy is a vital and necessary investment in the future of the Kansas City metropolitan area. The State failed to make that investment at the appropriate time, and barred the community from making it, for decades. Any sudden ending of any part of this effort would throw the system into chaos and reawaken the public skepticism that Kansas City public schools can

ever deliver quality education. We urge the Court to stay the course, as we have[3] and the courts below have, until the history of racial discrimination in the schools and the vestiges it has left in our community are erased.

B. Restoration of High Quality Education in Kansas City, as the Remedy Has Begun To Do, Is Essential to Successful Desegregation, and the Courts Should Not Be Satisfied Until Performance Is Improved.

Thousands of white and middle-class families took their children out of the KCMSD's schools and moved out of the KCMSD in the 1950's, 1960's, and early 1970's. Parents will go where they perceive they will get a better educational opportunity for their children, including other opportunities inside the corporate boundaries of Kansas City. This is a metropolitan area with many attractive and successful school districts available for parents who are attentive to the needs of their children. On the Kansas side of the state line as well as the Missouri side, award-winning school districts have excellent programs. Through the State-mandated pattern of allowing local districts to avoid educating black children, the KCMSD became identified as the "black" school district. The

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[3] The Civic Council has invested human and financial resources in assisting the KCMSD in building management systems to support the educational process. Most recently, a member of the Civic Council donated services to assist the KCMSD in building a computerized system for forecasting revenues and expenditures. Other members have assisted in developing management information, accounting, and financial management systems.

State's underfunding of education in the KCMSD reduced quality to a level that matched the public's stereotypes of what education in a "black district" would be. The KCMSD accordingly had a monumental task at the outset of this remedy to regain the confidence of the public and re-enroll non-minority students.

The Civic Council submits that the courts below have addressed this issue with sensitivity toward the metropolitan context of Kansas City and are pursuing the proper approach. Graduates of the KCMSD are predominantly minority. They will have to compete for positions in our companies with graduates of suburban and private schools, most of which are predominantly white. We know what the jobs of the future will be here in the Kansas City area.

The magnet programs and the underlying quality education programs that are part of the desegregation remedy will result in increased opportunities in life beyond graduation for these young people because they are tailored to the job market of the future. When the State chides the aqua culture facility, the technology programs including laser technology, optics and robotics, and the agricultural school, Brief of Petitioners at 10-11, it demonstrates its ignorance of something that we in the business community understand: these are the job opportunities of the future in the Kansas City area, as identified by our economic development agencies. As the desegregation remedial programs in Kansas City find their full student populations in the upcoming years – new non-minority students as well as the minority students for whom this remedy was designed – those children will

stand a far better chance to be prepared for the jobs of the future than Kansas City graduates have been for decades.

It is the cost of the alternatives that is far too high. Educational opportunities provided through the programs in this remedy give the minority children in our community the chance to be with students of all races and backgrounds and provide the baseline quality education they need for making them productive citizens and wage earners. The costs of public assistance, the criminal justice and prison systems, and the reeducating and retraining of employees that will be needed if a decent education is not provided are what neither the Kansas City community nor the State can afford. We who are very substantial local property taxpayers, as well as State taxpayers, support investment on the opportunity end of these students' lives rather than on the punishment and rehabilitation end.

This is not to say that we look to the courts to solve all of our local problems for us. We have supported legislation to build the ability of the KCMSD to support an appropriate educational program, and we will continue to strive to find means outside of the desegregation litigation to make high-quality, equitable educational opportunities available to area students. We have just committed to two additional years of funding a bi-state partnership initiated by the Civic Council, including the KCMSD and over 20 other area school districts, to assist schools and to encourage school districts to meet higher

expectations for student performance and to relate schools more closely to the workplace.[4]

We know that actual performance by students, just as performance by employees, is the appropriate measure of success, and we urge the Court to reach the same conclusion with regard to determining whether the educational vestiges of segregation have been eliminated to the extent practicable. We do not measure success in a business enterprise solely by how much money we put into it or whether it has the same resources as a competitor. The Court should reject the State's arguments that the unitariness of the quality of education in the KCMSD should be measured by the dollars put in or whether the resources are comparable to other districts. The real test of whether the quality of education is unitary should take full account of performance, by a variety of measures.

It is ironic that the State takes the position in this Court that these programs should not be assessed in terms of actual student performance. The Missouri Department of Elementary and Secondary Education and the Missouri General Assembly have been very vocal in other contexts in support of using student performances as the key measure of educational success. The Excellence in Education Act, adopted by the General Assembly several years ago, began the implementation of a process to evaluate schools based on performance rather than solely

[4] The initiative is called BE² (B-E-Squared), or Business/Education Expectations, which involves the participating school districts in a process intended to restructure systems of educational delivery and prepare area students for the demands and opportunities of the Kansas City job market.

on dollars spent. The Outstanding Schools Act, which substantially reformed education in Missouri and provided additional funding, goes a step further and holds school districts accountable for higher student performance. Those accountability measures were a condition of our support of the higher corporate and individual taxes imposed by the legislation.

We recognize that it will take time for this remedy to succeed. Not all building renovations are complete and thousands of African-American students are still in racially isolated schools. It is not sensible to expect quality education programs that substantially changed the way education is delivered in the district to reach their potential in terms of student performance in just a few years. Changes still are underway and thousands of students in the system have not had the full benefit of these remedies for long enough to compensate for the harm they suffered in their early years in segregated Kansas City schools. The Civic Council is confident that the courts below, which have heard many hundreds of hours of testimony and reviewed reams of data on the Kansas City schools, will be in the best position to judge when the vestiges of segregation affecting the quality of education in Kansas City schools are removed to the extent practicable.

CONCLUSION

For the foregoing reasons, the judgments of the courts below should be affirmed.

Respectfully submitted,

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